

Chapter 1400 Correction of Patents

- 1401 Reissue**
- 1401.01 Requisites**
- 1401.02 By Whom Filed and to Whom Granted**
- 1401.03 Notice in Original File**
- 1401.04 Offer To Surrender Original Patent and When Such Patent Is Returned**
- 1401.05 Use of Original Drawing**
- 1401.06 Form of Specification and Claims**
- 1401.07 New Matter**
- 1401.08 The Reissue Oath or Declaration**
- 1401.09 Examination of Reissue**
- 1401.09(a) Adjudication of Original Patent**
- 1401.10 Restriction and Election of Species**
- 1401.10(a) Divisional Reissue Application**
- 1401.11 Allowance and Issue**
- 1401.12 Reissue Filed While Patent Is in Interference**
- 1402 Certificate of Correction—Office Mistake**
- 1402.01 Applicant's Mistake**
- 1402.02 Handling of Request for Certificate of Correction**
- 1403 Disclaimers**

Errors in a patent may be corrected in three ways, namely by reissue, by the issuance of a certificate of correction which becomes a part of the patent, and by disclaimer.

1401 Reissue [R-50]

35 U.S.C. 251. Reissue of defective patents. Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Commissioner shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

The Commissioner may issue several reissued patents for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents.

The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent.

No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent.

35 U.S.C. 41. Patent Fees. (a) The Commissioner shall charge the following fees: . . .

4. On filing each application for the reissue of a patent, \$65; in addition, on filing or on presentation at any other time, \$10 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner. . . .

The reissue claims must be "for the invention disclosed in the original patent." as required by 35 U.S.C. 251, *In re Rowand et al*, 187 USPQ 487 (CCPA 1975).

The usual grounds for a reissue are that the claims are too narrow or too broad, or that the disclosure has inaccuracies. A reissue was granted in *Brenner v. State of Israel*, 862 O.G. 661; 158 USPQ 584, where the only ground urged was failure to file a certified copy of the original foreign application to obtain the right of foreign priority under 35 U.S.C. 119 before the patent was granted. The correction of misjoinder of inventors was held to be a ground for reissue in *Ex parte Scudder*, 169 USPQ 814.

When a reissue application is filed within two years from the date of the original patent, a rejection on the ground of lack of diligence or delay in filing the reissue should not be made.

A "claim" for the benefit of an earlier filing date in a foreign country under 35 U.S.C. 119 must be made in a reissue application even though such a claim was made in the application on which the original patent was granted. However, no additional certified copy of the foreign application is necessary. The procedure is similar to that for "Continuing Applications" in § 201.14(b).

The heading on printed copies will not be carried forward to the reissue from the original patent. Therefore, it is important that the file wrapper be endorsed under "Claims Foreign Priority."

The applicant is permitted to present every claim that was issued in the original patent for